

**Before the
Federal Communications Commission
Washington, D.C. 20554**

COMMENTS BY:
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In the Matter of)
Modernizing the E-rate)
Program for Schools and Libraries)

WC Docket No. 13-184

COMMENTS RELATED TO THE E-RATE 2.0 NOTICE OF PROPOSED RULEMAKING

Plaintiff Isaac Fajerman (“Fajerman”) hereby comments **on IV MAXIMIZING THE COST EFFECTIVENESS OF E-RATE FUNDS**
E. Improving the Competitive Bidding Process

I have been involved in the E-rate program as a service provider since 2001. The biggest problem in the purchase process is the fact that the Form 470 permits the solicitation of services with the most scant possible requirements with the consequence of chasing away new potential bidders and giving an unfair advantage to incumbents bidders.

In New Jersey School Purchase statutes unambiguous specifications are required. Only less than 1% of schools actually issue clear specifications, the rest provide no specifications. This permits school technical contacts to circumvent the difficult task of writing a specification and most times to stonewall new providers by avoiding the new provider’s inquiries. Bids are not taken publicly and are constantly bargained for with providers. The E-rate program and its current bidding procedures have eviscerated the long standing purchasing statutes of New Jersey. Low bids are rarely obtained. In the past year two schools rejected our proposals without any reason and respectively remained with their current provider at \$7000 and \$15,000 more per month.

In New Jersey schools purchase under e-rate using the purchase statute exempting them from public bidding. The statute states;

18A:18A-5 Exceptions to requirement for advertising.

18A:18A-5. Exceptions to requirement for advertising. Any contract, the amount of which exceeds the bid threshold,

shall be negotiated and awarded by the board of education by resolution at a public meeting without public advertising for bids and bidding therefore if

(7) The supplying of any product or the rendering of any service by a public utility, which is subject to the jurisdiction of the Board of Public Utilities, in accordance with the tariffs and schedules of charges made, charged and exacted, filed with said board;

(19) The provision or performance of goods or services for the support or maintenance of proprietary computer hardware and software, except that this provision shall not be utilized to acquire or upgrade non-proprietary hardware or acquire or update non-proprietary software;

(20) Purchases of goods and services at rates set by the Universal Service Fund administered by the Federal Communications Commission;

New Jersey law requires fair bidding specifications, see statute below.

18A:18A-15 Specifications generally.

18A:18A-15. Specifications generally. Any specifications for the provision or performance of goods or services under this chapter shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this chapter may:

The New Jersey statutes require fair specifications but allowed the ambiguous exception of clear specification using exemption (20), 19 and 7 above.

Paragraph 20 intended the E-rate 28 day competitive process to take the place of public bidding. However, the e-rate process does not require any specification. There is just a check box if there is a specification available.

Summary of problems:

1. The New Jersey public purchase laws exempt tariff telecommunications services from public bidding.
2. An ambiguous New Jersey statute excludes e-ratable purchases from competitive bidding.
3. The New Jersey schools have two options to avoid competitively bidding and they use them all the time.
4. Schools do not need to prepare concise and unambiguous specifications resulting in circumvention of time honor and a historically vetted legal process that does not permit an incumbent or favored bidder from being treated on an even playing field.
5. Regionalizing purchasing or bundling purchases is not a way to reduce costs because it will exclude smaller businesses to compete for services and raise the costs of items more cost effectively sold separately. This is the old \$700 hammer problem, where the large air plane requires a hammer. The Hammer store has to sell through the prime contract so it is marked up several times.

Recommendations:

1. Require New Jersey Schools to use the public bidding process developed and that has evolved for over 100 years and not the e-rate process. And then apply any discounts.
Or
2. Require the e-rate process to bid all services but insist schools produce a fair and open and complete unambiguous specification to permit all potential providers to submit bids on an equal footing to make the process a really competitive and not superficial like it now is.
3. Require all services to a school to be purchased separately as best as possibly can be done.
4. Do not create a centralized purchase that increases the purchase size under the guise of economy of scale but has fewer vendors and excludes many providers who can supply some of the services. For example there are few vendors that can build a Fiber WAN due to the larger construction costs, but there are many more vendors that can provide voice and internet services. If all the WAN, internet and voice are bundled many vendors and competition shall be substantially reduced.

Respectfully submitted by



Isaac Fajerman
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September 16, 2013